

**LOUELLA WEAVER**  
Claimant

## R & S BBQ

## Uninsured Respondent

AND

# KANSAS WORKERS COMPENSATION FUND

## ORDER

## APPEARANCES

## RECORD AND STIPULATIONS

## ISSUES

- (1) What is the appropriate date of accident?
- (2) What is the nature and extent of claimant's injury and disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge granting claimant permanent total disability compensation should be affirmed.

The Award sets forth findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own as if they were fully set forth herein.

The Board finds particularly convincing, regarding the appropriate date of accident, claimant's testimony that her symptoms continued to worsen after December 18, 1999, through September 15, 2000, her last day worked. In particular, claimant's symptoms increased to where she began experiencing pain in her low back and down both of her legs. These symptoms were considerably worse than anything claimant had experienced prior to December 18, 1999.

In line with the policy set forth in *Treaster*,<sup>1</sup> the Board finds the appropriate date of accident in this instance is claimant's last day of employment. Additionally, pursuant to the stipulation of the parties, claimant's average weekly wage on that date was \$437.13, which is the wage used for the computation of this award.

With regard to the nature and extent of claimant's injury and disability, the Board finds especially convincing the testimonies of Dr. Duggins and Jane K. Drazek, M.D., board certified in physical medicine and rehabilitation. Both Dr. Drazek and Dr. Duggins felt claimant realistically incapable of finding and/or participating in any substantial gainful employment. While Dr. Drazek did state that it was possible claimant could find a job within her restrictions, she went on to state that considering claimant's injury, debilitating condition, and her age, she did not realistically believe claimant capable of working. Dr. Duggins testified that in his opinion, claimant should not work, nor would she be capable of working in her current condition.

The Board acknowledges Philip R. Mills, M.D., who examined claimant on two occasions at respondent's request, found claimant to be physically capable of working in a light work category. The Board, however, does not find persuasive Dr. Mills' opinion that any restrictions that he would have placed on claimant should have been placed on claimant prior to the December 18, 1999 accident. Claimant's testimony that her condition continued to worsen to the point where she could no longer stand on her feet is persuasive and compels the Board to adopt the opinions of Dr. Drazek and Dr. Duggins over that of Dr. Mills.

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<sup>1</sup> *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

The Board, therefore, finds that the Award of the Administrative Law Judge finding claimant permanently and totally disabled is appropriate and should be affirmed.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated May 23, 2002, should be, and is hereby, affirmed in all regards.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant  
Carolyn Sue Edwards, Attorney for Uninsured Respondent  
E. L. Lee Kinch, Attorney for the Fund  
John D. Clark, Administrative Law Judge  
Director, Division of Workers Compensation